

IN THE SENATE OF THE UNITED STATES.

JUNE 10, 1858.—Ordered to be printed.

Mr. MALLORY submitted the following

REPORT.

The Committee on Naval Affairs, to whom was referred the memorial of Reynall Coates, praying compensation for losses sustained and services rendered while with the scientific corps of the South Sea Exploring Expedition, have had the same under consideration, and report :

This case was referred to the Committee on Naval Affairs of the Senate during the 1st session of the 28th Congress, and as the report made therein on the 7th day of March, 1844, contains a full statement of the petitioner's claim, your committee adopt the following as a part of their report, and now present it to the consideration of the Senate :

Mr. PEARCE made the following report :

The Committee on Naval Affairs, to whom was referred the memorial of Reynall Coates and Walter R. Johnson, as also the petition of William B. McMurtrie, report :

That, by the act of May 14, 1836, Congress authorized the President to send out a surveying and exploring expedition to the Pacific ocean and the south seas, and for that purpose to employ a sloop-of-war, and to provide such other smaller vessels as might be necessary and proper to render the expedition efficient and useful. For this purpose, they appropriated \$150,000, and, in addition thereto, authorized the President to use other means in the control of the Navy Department, not exceeding \$150,000, for the objects required. The exploring expedition was organized under this law, and, as auxiliary to it, the President determined to employ a corps of scientific persons, to be attached to the expedition. Dr. Coates and Mr. Johnson were two of the persons selected for this corps. On the 28th December, 1836, the following letter was addressed to each of these gentlemen :

“NAVY DEPARTMENT, December 28, 1836.

“SIR: You are hereby appointed a member of the scientific corps, to be attached to the South Sea Surveying and Exploring Expedition, now being fitted out under an act of Congress of the 18th May last. Your compensation will be at the rate of \$2,500 per year, and one

ration per day, while on duty under the direction of this department. Your allowances for travelling will be the same as those made to officers of the navy.

"I am, respectfully, your obedient servant,

"MAHLON DICKERSON."

These memorialists, in sundry communications to the Secretary of the Navy, speak of this letter as their "*commission*." They accepted it, they say, "with a full understanding, on their part, that they were regarded as being on active duty from the date of the acceptance of said appointment;" and that their time and labor were engaged to the government for the entire term necessary in preparing for and executing a voyage of at least three years. On the 30th June, 1837, the Secretary of the Navy, by letter, requested the memorialists to consider themselves on duty, as members of the scientific corps, from the 4th July then next, when their pay would commence. They acted as members of this corps, and received pay accordingly, from the 4th July, 1837, to the 13th August, 1838, when they were informed by the Secretary that the scientific corps had been reorganized and diminished in number, and that their services were no longer required. They now ask Congress to give them pay, at the promised rate, from the acceptance of their appointments till they were placed on pay.

Dr. Coates claims, in addition to this, to be indemnified for losses on his personal outfit and mess provision, and, also, for the loss of six months' time after his dismissal, before he could get into other business.

Mr. Johnson claims, in addition to the compensation for six months prior to his being put on pay, to be indemnified for losses by the resignation of his former situation, for abandoning a valuable contract with a bookseller, and for personal outfit, which his dismissal rendered useless to him.

The most of these the committee consider as unreasonable demands. The letter of appointment promises pay only while on duty under the direction of the department. It does not order the memorialists to report themselves for duty, or to consider themselves as in actual service. Indeed, at this time, their specific duties had not been assigned to any of the members of the scientific corps; Congress had made no appropriations for their pay, nor recognized in any way the validity of their appointments, and no estimates for their pay had ever been submitted. However the memorialists had mistaken the letter of the Secretary, it is certain that he intended, by that letter, to guard against such mistake. It was known at the department that their services would not be required for a long period, and it was altogether uncertain when the equipment of the expedition to which they were to be attached would be completed. It was a well established rule of the government that no officer could be entitled to pay, under his appointment, until his appropriate duties commenced. It is true, that before being put on pay, these gentlemen were occasionally consulted as to the books, apparatus, &c., to be provided for the expedition, and that they devoted some time to the consideration of these subjects;

but this was nothing more than was done by learned societies and scientific individuals not connected with the expedition, and who had no other interest in it than as it might affect the cause of science and the national character. Upon the first intimation that they expected pay for this period, they were promptly informed by the Secretary that they were in error, and that the department would not have made the appointments if such were to have been the effect. The committee, therefore, cannot recommend the allowance of the pay asked for; neither do they think the government bound, in equity, to indemnify the memorialists for sacrifices consequent upon the acceptance of their commissions or appointments, and their dismissal from the corps. No officer of the government is ever considered so entitled, because such sacrifices are incidental to the acceptance of every appointment under government. They are among the constant and universal hazards of public employment, to be reckoned before accepting such employment, and set off against the advantages of honorable place and fixed liberal compensation. The memorialists were on shore duty, exposed to no perils, and performing none but agreeable labors, from the 4th July, 1837, to August, 1838, for which period Dr. Coates received \$2,866 37, and Mr. Johnson, it is believed, the same. This was allowed by the department in the most liberal spirit, and not because their services were considered necessary to the expedition.

In a report made to the House of Representatives, at the second session of the last Congress, the Committee of Claims assumed that the letter of appointment before referred to constituted a contract between the government and the persons to whom it was addressed, which neither party could rightfully violate, and for the violation of which, either would be entitled to damages. They said that there was no law creating such an office as member of the scientific corps, &c., or vesting the appointment of members of that corps in the President or the head of a department, and, therefore, these gentlemen must be held to have entered into the service of government under a contract, the terms of which, by necessary construction, were, that they should be employed in the expedition from the time of its embarkation until its return.

This committee do not think so. The memorialists, in their various communications to the department, speak of the letter of appointment as their *commission*. They knew that Congress had forborne to designate the number of persons to be employed in this expedition, and to define the duties of their respective offices, because it was supposed (as a committee of the Senate had reported) that all this could be better arranged by the Executive. The law authorizing the expedition was intended to vest in the President ample power to make such appointments, and declare the duties of such officers as should be necessary to carry out the will of Congress in the matter. The persons who accepted these appointments were, therefore, officers of the expedition, though of an unusual character. But, if they be not considered as officers of the government, it is not perceived how the letter of appointment can be considered a contract, binding the United States to employ these gentlemen till the return of the expedition, or till any time certain, or to be made certain. The letter contains no

such express stipulation. The proposition it makes is, to enter the service of the United States, at a certain rate of compensation, without fixing a period of service—leaving both the commencement and the completion of it altogether indeterminate, and as to which the pleasure of the government must have been the only rule.

The Secretary informed Mr. Johnson, one of the memorialists, by letter, dated the 7th of July, 1837, that he might have declined the appointment at any time, and might still do so; and that he did not consider him under any obligations to perform the duties of a member of the corps, if it were injurious to his interests—a sufficiently plain and early intimation that the government did not suppose they were involved in a contract of such scope and binding effect.

The committee regret the disappointment and losses to which these gentlemen were subjected, but they were, for the most part, incident to the acceptance of their appointments; and, while the committee entertain no doubt of their scientific acquirements, and the fidelity with which they would have performed the duties originally assigned to them, they cannot enter into a computation of their sacrifices by the resignation of other situations, &c.

The committee therefore beg leave to report adversely to the prayer of the petitioner, and request to be discharged from the further consideration of the subject.